

Remarks

Claims 21, 23, 39 – 40 are drawn to a promoter expression cassette comprising a 5' untranslated region. Claim 21 is generic to claims 23, 39 and 40. Claim 21 is a "Markush Group" consisting of a 5' untranslated region and an entire promoter region from" Claims 22 and 24 – 36 are drawn to an expression cassette comprising a chloroplast functional promoter and transformed chloroplasts. These claims are dependent upon the generic claim 21 in Group I. A restriction requirement of such a Markush group is improper under MPEP § 803.02, which provides, in pertinent part:

If the members of the Markush group are sufficiently few in number or so closely related that a search and examination of the entire claim can be made without serious burden, the examiner must examine all the members of the Markush group in the claim on the merits, even though they are directed to independent and distinct inventions.

The Markush group includes TWO members. The search is not likely to be a "serious" burden, it is submitted. Please also consider the considerable prior art cited in the two previous patents 5,932,479 and 5,693,507.

Conclusion

However, to comply with the requirement that election be made even though the requirement be traversed pursuant to 37 CFR § 1.143, MPEP § 818.03, Applicants provisionally elect Group I, drawn to Claims 21, 23 and 39 - 40.

Reconsideration of the restriction requirement is respectfully requested and a prompt action on the merits is urged.

Respectfully submitted,
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